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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,786	11/21/2003	Edward Paul Carlin	9431	2939

27752 7590 02/06/2008  
THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION - WEST BLDG.  
WINTON HILL BUSINESS CENTER - BOX 412  
6250 CENTER HILL AVENUE  
CINCINNATI, OH 45224

EXAMINER
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BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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02/06/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/719,786

Applicant(s)

CARLIN, EDWARD PAUL

Examiner

MICHAEL G. BOGART

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2007.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 5-7,9-11,13 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-7,9-11,13 and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections – 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(f) he did not himself invent the subject matter sought to be patented.

Claims 5-7, 9-11, 13 and 18-20 are rejected under 35 U.S.C. § 102(e) as being anticipated by Schoelling (US 2007/0083182 A1; also published as WO 2004/028428 A1).

The related international application WO 2004/028428 A1 designates the US and is published in the English language.

Regarding claim 13, Schoelling teaches a tampon (130) for feminine hygiene comprising an insertion end (132), a withdrawal end (134), a length, a longitudinal axis (X), a radial axis, and an outer surface;

said tampon (130) being comprised of compressed fibrous material (136)(¶ 0055);

wherein a measured portion of said outer surface (148) of said insertion end (132) comprises a first surface area (forward portion of tampon) and a measured portion of said outer surface (145) of said withdrawal end (134) comprises a second surface area (rearward of element (152)), said second surface area lacking depressions and protuberances, wherein at least a portion of said first surface area comprises discretely-spaced (the longitudinal grooves are

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separate from each other) individual depressions (140) having a pentagon shape (see cross section of fig. 2 infra, which shows a pentagon-shaped depression), wherein at least a portion of the first surface area further comprises protuberances (138)(see figures 5, 6 and 7 infra). It is noted that the protuberances and grooves do not extend rearward of element (152), where they are sealed or pressed together to form a contiguous rear outer surface.

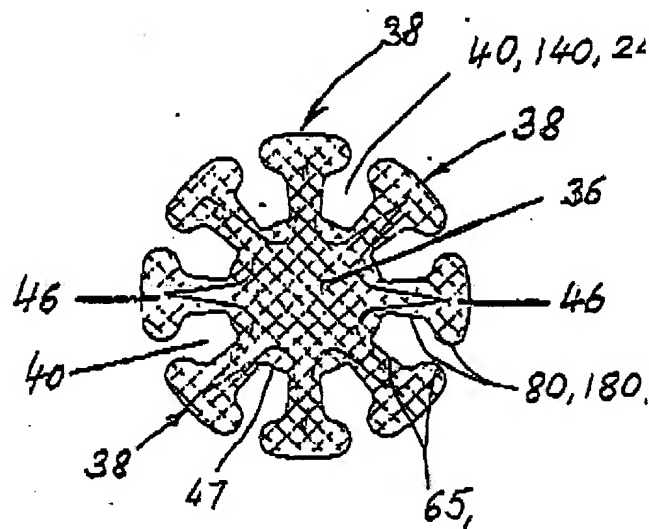
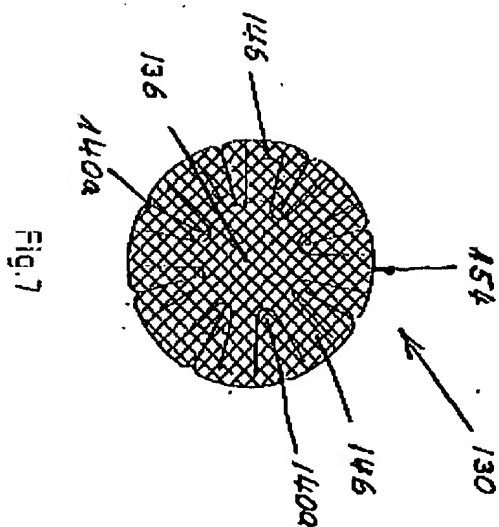
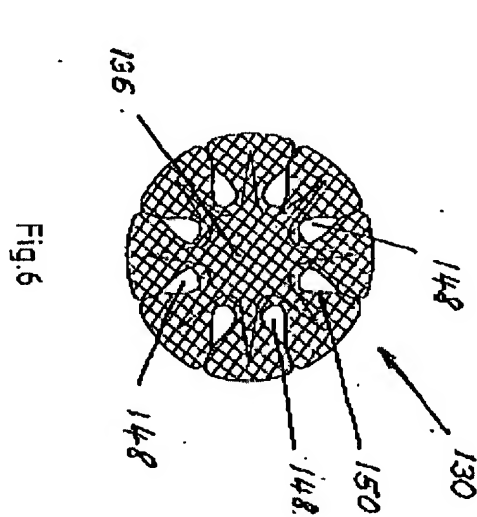
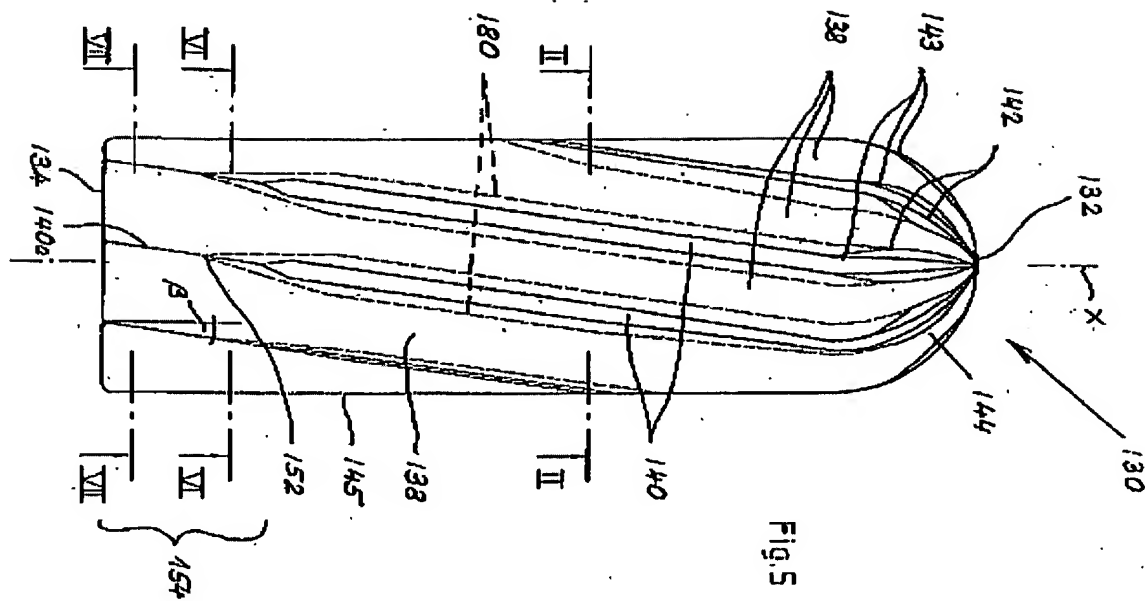


Fig.2



Regarding claims 5 and 6, Schoelling teaches a diagonal pattern of evenly spaced surface depressions (42)(figure 5).

Regarding claim 7, Schoelling teaches evenly spaced depressions (140)(figure 5).

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Regarding claims 9-11, Schoelling teaches protuberances (138) arranged in an evenly spaced diagonal line pattern (figure 5).

Regarding claim 18, Schoelling teaches a tampon core (136) with an essentially uniform density across its cross section.

Regarding claim 19, Schoelling teaches that the entire tampon core (136) is highly compressed (§ 0055).

Regarding claim 20, Schoelling teaches a finger indent (56) at the withdrawal end (134)(§ 0040).

Claims 5-7, 9-11, 13 and 18-20 are rejected under 35 U.S.C. § 102(f) because the applicant did not invent the claimed subject matter.

Schoelling claims priority to German patent application 102 44 874.4 which was filed 26 September 2002. This indicates that the subject matter of that application was invented by Schoelling on or before that date, although it was published subsequent to the filing date of the instant application. As described in detail supra, Schoelling teaches every substantive limitation claimed by the instant invention.

### ***Response to Arguments***

Applicant's arguments filed 26 November 2007 have been fully considered but they are not persuasive.

Applicants assert that the new claim language where the depressions are now discretely spaced individual depressions distinguished the claimed invention over Schoelling, because that reference has depressions which are grooves which extend along the length of the disclosed

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tampon. While the individual grooves/depressions of that reference do indeed extend long the forward portion of the disclosed reference, they are discrete (separate) and spaced away from each other. *Merriam Webster's Online Dictionary* includes a definition of "discrete" as "constituting a separate entity"(see <http://www.merriam-webster.com/dictionary/discrete>). The claims must be given their broadest reasonable interpretation. MPEP § 2111. The words of a claim must be given their plain meaning. MPEP § 2111.01. Applicant's specification does not provide a specific definition of "discrete" that is contrary to the interpretation provided herein.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

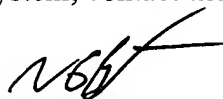
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

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In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart  
1 February 2008

TATYANA ZALUKAEVA  
SUPERVISOR  
EXAMINER  
